

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, June 1, 2022

Hearing Room 302

10:00 AM

1:00-00000

Chapter

#0.00 This calendar will be conducted remotely, using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

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Video/audio web address: <https://cacb.zoomgov.com/j/1604646619>

Meeting ID: 160 464 6619

Password: 865422

Dial by your location: 1 -669-254-5252 OR 1-646-828-7666

Meeting ID: 160 464 6619

Password: 865422

Docket 0

Matter Notes:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

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CONT...

Chapter

**United States Bankruptcy Court
Central District of California
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10:00 AM

1:19-10565 Pamela M. Sorenson

Chapter 13

#1.00 Motion for relief from stay

WILMINGTON TRUST NATIONAL ASSO.

fr. 11/18/20, 12/16/20, 2/24/21, 4/28/21; 5/5/21,
6/30/21; 9/1/21; 10/20/21, 12/8/21; 2/23/22

Docket 51

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Nothing has been filed as to this Motion since the last continued hearing on 2/23/22. What is the status of this RFS motion?

Appearance Required.

PREVIOUS TENTATIVE BELOW

Petition Date: 03/11/2019

Chapter 13 plan confirmed: 7/22/19

Service: Proper. Opposition filed.

Property: 11052 Reseda Blvd., Northridge, CA 91326

Property Value: 582,000.00 (per debtor's schedules) (Property is owned in Tenancy in Common... Debtor's portion is \$145,000.00).

Amount Owed: \$358,890.82 (per Movant's papers)

Equity Cushion: 38.33%

Equity: \$223,109.18

Post-Petition Delinquency: \$ 6,419.86 (3 payments of \$2,323.05 less suspense \$549.29)

Movant requests relief under 11 U.S.C. 362(d)(1), with the specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); 3 (Movant permitted to engage in loss mitigation activities); 3 (option to enter into forbearance agreement, loan modification, refinance agreement); 6 (relief

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CONT... Pamela M. Sorenson

Chapter 13

from co-debtor stay); and 7 (waiver of the 4001(a)(3) stay). Movant asserts there are grounds for relief from the stay because the Debtor has failed to make postpetition payments. Movant alleges that the Debtor has only made partial payments for the months of August, September and October 2020.

The Debtor opposes this motion because the Debtor believes that the property was wrongfully reassessed by the LA County Assessor's Office. Debtor claims that there is \$390,000.00 in equity in the property.

Whether the Court applies the numbers provided by the Debtor's schedules and movant's papers or the Debtor's adjusted figures, there appears to be a substantial amount of equity in the property. Have the parties discussed entering into an APO?

Appearance Required.

Party Information

Debtor(s):

Pamela M. Sorenson

Represented By
Michael D Luppi

Movant(s):

Wilmington Trust, National

Represented By
Darlene C Vigil

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

1:19-12533 Stuart Malin and Patricia Malin

Chapter 13

#2.00 Motion for relief from stay

METROPOLITAN LIFE INSURANCE CO.

fr. 10/28/20, 6/30/21; 8/18/21; 9/29/21; 11/17/21; 3/2/22; 4/20/22, 4/27/22

Docket 44

Matter Notes:

- NONE LISTED -

Tentative Ruling:

This hearing was continued from 4/27/22 so that the parties could complete the exchange of paperwork necessary for a loan modification. Nothing further has been filed with respect to this Motion. What is the status of this Motion?
APPEARANCE REQUIRED

Previous Tentative Below:

Petition Date : 10/06/2019

Confirmation Date: 04/16/2020

Service: Proper. Opposition filed on 10/9/2020 (Docket No. 48)

Property: 7718 Maestro Avenue, Los Angeles, California 91304

Property Value: \$ 900,000 (per debtor's schedules)

Amount Owed: \$462,609.56 (per Movant's declaration)

Equity Cushion: 48.59%

Equity: \$437,390.44

Post-Petition Delinquency: \$24,009.37 (22 payments of \$2,090.85, \$1,030.00, less suspense account \$19.98).

Movant requests relief under 11 U.S.C.362(d)(1), with specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); 3 (option to enter into a loan modification) and 7 (waiver of the 4001(a)(3) stay). Movant alleges that the Debtor has missed postpetition payments. The last partial postpetition payment occurred on 2/27/20.

The Debtor opposes this motion and asserts that the Movant is not taking additional payments into account. Further, the Debtor attempted to get a

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CONT... Stuart Malin and Patricia Malin

Chapter 13

hardship modification or Covid relief but the lender failed to follow through.

There is substantial equity in the Property, have the parties discussed entering into an APO or entering into a Loan Modification?

Party Information

Debtor(s):

Stuart Malin

Represented By
Steven Abraham Wolvek

Joint Debtor(s):

Patricia Malin

Represented By
Steven Abraham Wolvek

Movant(s):

Metropolitan Life Insurance

Represented By
Daniel K Fujimoto
Christopher Giacinto
Sean C Ferry

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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1:20-11923 Bonnie Kay Lopez

Chapter 13

#3.00 Motion for relief from stay

WELLS FARGO BANK

fr. 4/27/22

Docket 61

Matter Notes:

- NONE LISTED -

Tentative Ruling:

This hearing was continued from 4-27-22 so that the parties could discuss whether this can be resolved with an APO. Nothing has been filed since the last hearing.

What is the status of this Motion?

APPEARANCE REQUIRED

Previous tentative below:

Petition Date: 10/27/2020

Ch. 13 plan confirmed: 2/4/2021

Service: Proper; co-debtor served. Opposition filed.

Property: 8051 Paso Robles Ave., Van Nuys, CA 91406

Property Value: \$650,000 (per debtor's Mtn. to Impose Stay, ECF doc. 14)

Amount Owed: \$582,672

Equity Cushion: 2.4%

Equity: \$15,328

Post-confirmation Delinquency: \$6,683.19 (three payments of \$2,227.73, less suspense balance of \$380.40)

Movant requests relief under 11 U.S.C. 362(d)(1), with the specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); 3 (Movant permitted to engage in loss mitigation activities); 6 (relief from co-debtor stay); and 7 (waiver of the 4001(a)(3) stay). Movant believes cause exists for lifting the stay because the Debtor has missed several postpetition payments.

Movant asserts that the last payment received on 2/15/2022.

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CONT... Bonnie Kay Lopez

Chapter 13

Debtor acknowledges that she fell behind with the mortgage payments but believes that the Property is necessary for an effective reorganization. Debtor would like to enter into an APO.

Are parties open to entering into an APO?

Appearance Required.

Party Information

Debtor(s):

Bonnie Kay Lopez

Represented By
Raj T Wadhvani

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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10:00 AM

1:21-11544 The Harman Press Inc.

Chapter 11

#4.00 Chapter 11 Small Business Plan of Reorganization
(Subchapter V)

fr. 3/9/22

Docket 77

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Case will be dismissed at the status conference unless changed circumstances

Old tentative:

Debtor should clarify when/how Admin rent claim will be paid. Will any part of rent be paid in full upon confirmation or will all be paid over 60 months?

What is lease situation?

The UST has a good point on feasibility - the actual profits are \$40,000 less than projected in the plan based on MORs; the debtor should explain why there is a discrepancy and also address the reduction in income in January?

When are class 3 unsecured non-priority being paid their 1%? - silent in plan

Debtor and/or trustee should propose a cost-effective approach to remaining steps - solicit with above clarifications? A deadline to submit any additional evidence; Confirmation hearing possible April 27, May 4 or 11?

APPEARANCE REQUIRED

Party Information

Debtor(s):

The Harman Press Inc.

Represented By
Thomas B Ure

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CONT... The Harman Press Inc.

Chapter 11

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

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1:21-11544 The Harman Press Inc.

Chapter 11

#5.00 Status Conference of Chapter 11, Subchapter V Case; and (2) Requiring Report on Status of Chapter 11, Subchapter V Case.

fr. 11/3/21; 11/17/21, 2/23/22; 3/9/22

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Appearance Required.

Party Information

Debtor(s):

The Harman Press Inc.

Represented By
Thomas B Ure

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

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1:21-11639 Guillermo Castaneda Rangel, Sr.

Chapter 13

#6.00 Motion for relief from stay

WELLS FARGO BANK

Docket 30

***** VACATED *** REASON: Moved to 10:30 a.m. If**

Matter Notes:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Guillermo Castaneda Rangel Sr.

Represented By
John D Sarai

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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10:30 AM

1:17-12142 Stephen Homs Lillis

Chapter 13

#7.00 Motion for relief from stay

Wells Fargo Bank, N.A.

fr. 5/4/22

Docket 101

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Petition Date: 8/14/2017

Chapter 13 plan confirmed: 6/7/2018

Service: Proper. Opposition filed.

Property: 14617 Round Tree Dr., Sherman Oaks, CA 91403

Property Value: \$1,750,000 (per debtor's Motion to Continue Stay, ECF doc. 8)

Amount Owed: \$271,942

Equity Cushion: 52%

Equity: \$900,000

Post-Confirmation Delinquency: \$7,433.48 (4 payments of \$1,858.37)

Movant requests relief under 11 U.S.C. 362(d)(1), with the specific relief requested in paragraphs **2** (proceed under non-bankruptcy law); **3** (Movant permitted to engage in loss mitigation activities); and **7** (waiver of the 4001(a) (3) stay). Movant believes cause exists for lifting the stay because the Debtor has missed several postpetition payments. Movant asserts that the last payment received on 3/7/22.

Debtor states that he attempted to tender his mortgage payment to a WFB Branch on April 5, 2022, and the bank representative said the account was "locked." Debtor states that the same thing happened in March 2022, and so he has two untendered checks for WFB for two mortgage payments. Debtor states that they have made, or attempted to make, all required postpetition

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CONT...

Stephen Homs Lillis

Chapter 13

payments to Wells Fargo since the filing of this Chapter 13 case. He contends that any missing payments or delinquencies are the result of either accounting problems by Wells Fargo, or refusal of Wells Fargo to accept tendered payments. Debtor maintains that he is able to cure any existing default by the hearing date on this Motion, once an accurate accounting by Wells Fargo is provided and it is determined what is the actual "delinquency" amount.

Has Debtor's counsel received an accounting of the alleged delinquent payments from WFB?

Appearance Required on 6/1/22

Party Information

Debtor(s):

Stephen Homs Lillis

Represented By
Mark J Markus

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:19-10304 David Alvarez

Chapter 13

#8.00 Motion for relief from stay

CITIBANK, N.A.

fr. 4/20/22

Docket 55

***** VACATED *** REASON: Resolved per APO - HM**

Matter Notes:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Alvarez

Represented By
Kevin T Simon

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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1:19-12996 Scott Michael Graffius

Chapter 13

#9.00 Motion for relief from stay

NATIONSTAR MORTGAGE LLC
D/B/A MR. COOPER

fr. 3/23/22, 5/4/22

Docket 63

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Petition Date: 12/1/2019
Chapter 13 plan confirmed: 3/12/2020
Service: Proper. Opposition filed.
Property: 19829 Welby Way, Winnetka, CA 91306
Property Value: \$558,918 (per debtor's schedules)
Amount Owed: \$424,251
Equity Cushion: 16.1%
Equity: \$89,954
Post-Confirmation Delinquency: \$76,202.30 (10 payments of \$3,369.93; 12 payments of \$3,438.75; plus attorney's fees & costs)

Movant requests relief under 11 U.S.C. 362(d)(1), with the specific relief requested in paragraphs **2** (proceed under non-bankruptcy law); **3** (Movant permitted to engage in loss mitigation activities); and **7** (waiver of the 4001(a) (3) stay). Movant believes cause exists for lifting the stay because the Debtor has missed several postpetition payments. Movant asserts that the last payment received on 4/15/22.

Debtor states that he acknowledges he is substantially behind on his mortgage payments as a result of a COVID-19-based forbearance agreement. Debtor states that it was his belief that the forbore payments were to be applied to the end of the loan, and that he continues to be in

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CONT... **Scott Michael Graffius**
communication with Movant.

Chapter 13

Debtor states that he is applying for mortgage relief with the California Mortgage Relief Program, which provides as much as \$80,000 of Covid-19-caused first position mortgage relief directly to the impacted mortgage lender. The postpetition arrearage amount reflected by Movant Nationstar Mortgage LLC is lower than the \$80,000 maximum relief figure. Debtor requests that no ruling be made on this Motion until his Relief Application has been either approved or denied.

Is Movant amenable to a continuance to the Court's July 27, 2022 calendar, to allow Debtor time to have his Relief Application reviewed and decided?

Appearance Required on 6/1/22

Party Information

Debtor(s):

Scott Michael Graffius

Represented By
Jeffrey J Hagen

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:20-11601 Andrea Ricci

Chapter 13

Adv#: 1:20-01120 Hensarling et al v. Crooks

#10.00 Status Conference Re: Complaint to
Determine Non-Dischargeability of Debt
and for Entry of Judgment for Money

fr. 2/17/21, 2/24/21; 2/9/22; 3/2/22

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Having considered the Joint Status Report, filed 5/20/22 as ECF doc. no. 51, wherein the parties inform the Court that the parties have settled the matter, the Court finds cause to continue this Status Conference to July 27, 2022 at 11:00 a.m., to allow them the opportunity to document the settlement.

APPEARANCE WAIVED ON 6/1/22

Party Information

Debtor(s):

Andrea Ricci

Represented By
Robert M Aronson

Defendant(s):

Tonya Crooks

Pro Se

Joint Debtor(s):

Tonya Crooks

Represented By
Robert M Aronson

Plaintiff(s):

Sandra Hensarling

Represented By
Alberto J Campain

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CONT... Andrea Ricci

Chapter 13

Ashely Hensarling

Represented By
Alberto J Campaign

Browgal, LLC (in its derivative

Represented By
Alberto J Campaign

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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1:21-10865 Starr F Taxman

Chapter 13

Adv#: 1:21-01059 Kurtz v. Taxman

#11.00 Motion for Extension of Time to Respond to Motion to
Dismiss Adversary Proceeding

fr. 11/3/21

Docket 11

***** VACATED *** REASON: Cont'd to 12/5/22 at 11 p.m. - hm**

Matter Notes:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Starr F Taxman

Represented By
Stella A Havkin

Defendant(s):

Starr F Taxman

Represented By
Stella A Havkin

Plaintiff(s):

Gary Alan Kurtz

Represented By
Stephen L Burton

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:21-10865 Starr F Taxman

Chapter 13

Adv#: 1:21-01059 Kurtz v. Taxman

#12.00 Motion to Dismiss Adversary Proceeding Pursuant to FRCP
12(b)(6) and FRBP 7012

fr. 11/10/21

Docket 4

***** VACATED *** REASON: Cont'd to 12/5/22 at 11 p.m. - hm**

Matter Notes:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Starr F Taxman

Represented By
Stella A Havkin

Defendant(s):

Starr F Taxman

Represented By
Stella A Havkin

Plaintiff(s):

Gary Alan Kurtz

Represented By
Stephen L Burton

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:21-10865 Starr F Taxman

Chapter 13

Adv#: 1:21-01059 Kurtz v. Taxman

#13.00 Status Conference re: Complaint 1) Non-Dischargeability of debt 523(a)(2)(A)
2 Non-Dischargeability - 523(a)(4),
3) Non-Dischargeability - 523(a)(6),
4) Non-Dischargeability - 523(a)(6), - Conversion and
5) Determination that Bankruptcy is Nondischargeable - 727(a)(4)(A)

fr. 11/17/21

Docket 1

***** VACATED *** REASON: Cont'd to 12/5/22 at 11 p.m. - hm**

Matter Notes:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Starr F Taxman

Represented By
Stella A Havkin

Defendant(s):

Starr F Taxman

Pro Se

Plaintiff(s):

Gary Alan Kurtz

Represented By
Stephen L Burton

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:21-11060 David Thomas Djolakian and Olivia Lucille Djolakian

Chapter 7

#14.00 Trustee's Final Report and Applications
for Compensation and Deadline to Object

Trustee:
David K. Gottlieb

Docket 37

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Service proper. No opposition filed. Having reviewed the Trustee's Final Report, the Court finds that the fees and costs are reasonable and are approved as requested.

APPEARANCES WAIVED ON 6-1-22. TRUSTEE TO LODGE ORDER WITHIN 7 DAYS

Party Information

Debtor(s):

David Thomas Djolakian

Represented By
Elena Steers

Joint Debtor(s):

Olivia Lucille Djolakian

Represented By
Elena Steers

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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1:21-11639 Guillermo Castaneda Rangel, Sr.

Chapter 13

#14.01 Motion for relief from stay

WELLS FARGO BANK

Docket 30

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Petition Date: 10/5/2021
Chapter 13 plan confirmed: 3/7/22
Service: Proper. No opposition filed.
Property: 16909 Chatsworth St., Granada Hills, CA 91344
Property Value: \$800,000 (per debtor's schedules)
Amount Owed: \$538,477
Equity Cushion: 92%
Equity: \$495,398
Post-Petition Delinquency: \$3,865.54 (2 payments of 1,955.18).

Movant requests relief under 11 U.S.C. 362(d)(1), with the specific relief requested in paragraphs **2** (proceed under non-bankruptcy law); **3** (Movant permitted to engage in loss mitigation activities); and **7** (waiver of the 4001(a) (3) stay). Movant believes cause exists for lifting the stay because the Debtor has missed several postpetition payments. Movant asserts that the last payment received on 3/25/2022.

Debtor did not file an opposition but there is sufficient equity here to protect Movant's claim. Have the parties had an opportunity to discuss whether this matter can be resolved under an APO?

Appearance Required

Party Information

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CONT... Guillermo Castaneda Rangel, Sr.

Chapter 13

Debtor(s):

Guillermo Castaneda Rangel Sr.

Represented By
John D Sarai

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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11:00 AM

1:19-10501 Capital Gold Group Inc.

Chapter 7

#15.00 Motion to Disallow Claim No. 32 filed by
Carol Rackley

fr. 4/20/22; 5/11/22

Docket 74

Matter Notes:

- NONE LISTED -

Tentative Ruling:

An evidentiary hearing is required

APPEARANCE REQUIRED ON 6-1-22

PREVIOUS TENTATIVE BELOW

Capital Gold Group, Inc. ("Debtor") filed for Chapter 7 bankruptcy on March 3, 2019. The claims bar date for non-governmental creditors was August 16, 2019. Carol Rackley ("Claimant") filed a general unsecured claim on November 18, 2019, alleging Debtor owes her \$100,000 for "purchased gold and silver coins never received (numismatic) pre 1928" (the "Claim"). Claimant alleges the purchase of the coins from Debtor was made on September 18, 2013. Debtor did not list Claimant in its schedules E/F as a general unsecured creditor.

Interested parties, Jonathan Rose and Siniva Walker ("Movants" or "Transferees"), object to the Claim. Movants contend that Debtor delivered to Claimant all of the coins she purchased. Alternatively, if Debtor was liable to Claimant, Movants contend that (1) the Claim was filed after the claims bar deadline on August 16, 2019, and (2) the four year statute of limitations under section 337 of the California Code for Civil Procedure has run for breach of contract; therefore, the Claim should be disallowed in its entirety.

Claimant asserts that the Claim should not be dismissed on the grounds offered by Movants. In her opposition, Claimant argues she was not included on the original list of creditors who were granted notice of the Debtor's bankruptcy petition and did not receive timely notice of the claims bar deadline. Claimant contends an expired statute of limitations does not bar

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CONT... Capital Gold Group Inc.

Chapter 7

her from filing a claim against the bankruptcy estate, it only bars her from pursuing an action to obtain a judgment on the debt. Claimant also argues Movant did not meet the standard for the disallowance of a claim under section 502.

At oral argument on April 20, 2022, Creditor raised the issue of standing, specifically that Movants lack standing to assert the statute of limitations defense under § 558 because they are not the debtor or the trustee. Movants countered that they were asserting their right to object to claims against the estate under the terms of a settlement with Trustee Weil, approved by the Court on Jan. 27, 2022 (the "9019 Settlement," ECF doc. 64). After considering the oral argument, the Court issued a briefing schedule on the issue of standing to assert defenses and continued the hearing.

On April 25, 2022, Creditor filed her brief in support, arguing that nothing in the 9019 Settlement assigns the rights to assert statute of limitation defenses. On May 3, 2022, Movants filed their supplemental brief, asserting that Trustee settled potential claims against them; Movants agreed to pay all allowed claims against the estate in full. The Settlement Agreement, however, was expressly contingent upon the Court finding that the Movants, "as settling parties, have standing to file objections to proofs of claims filed in the [bankruptcy case]." Claimant Supp. Brief, Ex. 1, p. 6, ¶ 1; ¶ 4. Movants contend that, under the terms of the 9019 Settlement, they are parties in interest with standing to object to the Claim. As such, Movants maintain that they may assert all affirmative defenses available to the estate under § 558, including statutes of limitation.

Standing to Object to Claims

Under 11 U.S.C. §502(a) any "party in interest" may object to a filed proof of claim. The Bankruptcy Code does not define "party in interest," and who is a "party in interest" will depend on the particular purposes of the Bankruptcy Code section at issue. In re Owen-Moore, 435 B.R. 685, 690-91 (Bankr. S.D. Cal. 2010). The term has been considered "broad enough to include anyone whose financial interest may be affected by the outcome of a bankruptcy case." In re Barnes, 275 B.R. 889, 892-3 (Bankr. E.D. Cal. 2002).

The Objecting Parties and Trustee entered into a settlement that provided for the Objecting Parties to make objections to claims and assert defenses on behalf of the Estate. *Motion To Approve Settlement Between Trustee and Jonathan Rose And Siniva Walker*, ECF doc. 52. The salient terms of the 9019 Settlement are as follows:

G. The Parties wish to enter into a settlement that will fully resolve the Trustee's Claims against the Transferees and that will grant the

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Transferees standing to object to proofs claims where a meritorious basis exists for such objection.

...

NOW THEREFORE, in exchange for the consideration set forth herein, the sufficiency of which each Party acknowledges, the Parties stipulate as follows:

1. Court Approval: This Agreement is contingent upon approval by the United States Bankruptcy Court presiding over the CGG Case that (1) approves this Agreement, and (2) finds that Transferees, as settling parties, have standing to file objections to proofs of claims filed in the CGG Case (see below).

2. Settlement Payment. In consideration of and subject to the covenants and conditions herein, Transferees shall pay the Trustee a sum of money equal to the total amount of the Allowed Claims (defined below) plus allowed Administrative and Priority Claims (defined below) (collectively, the "Settlement Sum")

...

4. Objections to Claims

a. Transferees intend to file objections to seven proofs of claims previously identified to the Trustee and will file such objections within 2 weeks of entry of a final, nonappellable order approving this Agreement;

b. The Trustee does not presently intend to file objections to claims and does not oppose Transferees filing meritorious objections to the proofs of claims they have previously identified to the Trustee (the "Objections to Claims"). The Trustee reserves the right to respond to Transferees' Objections to Claims;

c. The claims that have been filed and are not objected to by Transferees, along with the claims that survive the Objections to

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Claims, are referred to herein as the "Allowed Claims";

d. The Trustee anticipates that the administrative claims of her professionals, consisting of Diamond McCarthy LLP, Raines Feldman LLP, and Biggs & Company will be approximately \$250,000, but the allowed amount of such fees could be higher or lower than anticipated. The amount of the professional fees and expenses that are approved by the Court are referred to herein as the "Allowed Professional Fees." The Transferees do not waive the right to challenge the amount of the administrative claims sought by the Trustee and her professionals;

e. The Trustee estimates that the administrative tax claims for purposes of this Agreement will be \$20,000, but the allowed amount of such claims could be higher or lower than estimated (the "Administrative Tax Claims").

f. The amount of the Trustee's statutory fee will be calculated upon the preparation of the Trustee's Final Report and is referred to herein as the "Trustee's Fee" (together with the Allowed Professional Fees and the allowed Administrative Tax Claims, referred to herein as the "Allowed Administrative Claims").

Declaration Of Diane C. Weil, Chapter 7 Trustee In Support Of Motion To Approve Settlement Between Trustee And Jonathan Rose And Siniva Walker, Ex. 1 (ECF doc. 53, Dec. 29, 2021).

Here, the terms of the Settlement provide that the Objecting Parties are to pay to Trustee \$100,000 as a down payment and, if the Allowed Claims against the Estate are less than the money payment tendered by the Objecting Parties, Trustee is to refund the difference to Objecting Parties after satisfying the allowed claims. *Declaration Of Diane C. Weil, Chapter 7 Trustee In Support Of Motion To Approve Settlement Between Trustee And Jonathan Rose And Siniva Walker*, Ex. 1, ¶ 2(a) – 2(f). The Objecting Parties' financial interest is clear – the more claims that are properly disallowed, the amount due by them to Trustee under the Settlement will be reduced.

When it comes to general objections to claims in a chapter 7 case, under 11 U.S.C. § 323, the trustee is representative of the estate and therefore the trustee is ordinarily the party in interest in best position to raise objections under Section 502(a) on behalf of the estate. In re Dominelli, 820 F. 2d. 313, 316-7 (9th Cir. 1987) ("the trustee, as representative of the

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estate, normally can represent each general creditor as effectively as the could the creditor itself.") Trustee, however, is not the only party in interest If there is a conflict of interest between a trustee and an individual creditor or if a trustee has refused to bring a claim objection, another creditor may do so. See Id.; In re Bakke, 243 B.R. 753, 756 (Bankr. D. Ariz. 1999); In re Sun Ok Kim, 89 B.R. 116, 118 (Bankr. D. Haw. 1987); In re Ulz, 401 B.R. 321, 327 (Bankr. N.D. Ill. 2009).

In order for a creditor or the debtor to obtain standing to object to another creditor's claims in a case where a trustee has been appointed, the objecting party must first request the trustee to object to the claim, the trustee must refuse to object to the claim, and the Bankruptcy Court may then authorize the creditor or debtor to proceed. In re Bakke, 243 B.R. 753, 756 (Bankr. AZ, 1999), citing In re Sun OK Kim, 89 B.R. 116, 118 (D. HI, 1987); and In re Parker Montana, 47 B.R. 419, 421 (D. Mont. 1985). Typically, this will arise in the context of a creditor's objection to the allowance of some other creditor's proof of claim in accordance with section 502 of the Code. 5 Collier on Bankruptcy P 558.01 (16th 2022).

In the Settlement, Trustee avers that she "does not presently intend to file objections to claims and does not oppose [Objecting Parties'] filing meritorious objections to the proofs of claims they have previously identified to the Trustee (the "Objections to Claims"). The Trustee reserves the right to respond to Transferees' Objections to Claims." Settlement, ¶ 4(b). The Order Approving the Settlement under FRBP 9019 was entered on Jan. 27, 2022, ECF doc. 64. Thus, under the terms of the Settlement and this Court's Order Approving the 9019 Settlement, Objecting Parties sought the permission of Trustee to object to claims, the trustee noted that , in consideration for the funds received, she will not prosecute objections to claims and permitted Objecting Parties to do so on her behalf. The Order Approving the 9019 Settlement evinces the Bankruptcy Court's authorization for Objecting Parties to proceed.

A creditor or creditors' committee is also entitled to assert section 558 defenses when such parties obtain authority to prosecute claims on behalf of the estate. 5 Collier on Bankruptcy P 558.01 (16th 2022)(internal citations omitted). A creditor or creditors' committee is also entitled to assert section 558 defenses when such parties obtain authority to prosecute claims on behalf of the estate. Id.

Objection to Claim under § 502(b)(1)

Under section 502, a proof of claim is deemed allowed, unless a party of interest objects. FRBP 3001(f) states that a Proof of Claim filed and executed in accordance with the rules

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shall constitute prima facie evidence of the validity and amount of the claim. FRBP 3001-3007. LR 3007-1.

Per In re Heath, 331 B.R. 424 (B.A.P. 9th Cir. 2005), it is not a sufficient objection to rely solely on an alleged lack of prima facie validity of the proof of claim and its documentation. In re Heath, 331 B.R. at 435, 437-38. Section 502 deems a claim allowed and directs that the bankruptcy court "shall" allow claims with limited exceptions (i.e. debtor was wrongly charged for goods or services, specific interest charges or fees were miscalculated or wrongly imposed). See, e.g., id., 331 B.R. at 437-38. "If there is no substantive objection to the claim, the creditor should not be required to provide any further documentation of it." Id. at 436, citing In re Shank, 315 B.R. 799, 813 (Bankr. N.D. Ga. 2004).

A proof of claim is deemed allowed unless a party in interest objects under § 502(a) and constitutes "prima facie evidence of the validity and amount of the claim" pursuant to Bankruptcy Rule 3001(f). See also Fed. R. Bankr.P. 3007. The filing of an objection to a proof of claim "creates a dispute which is a contested matter" within the meaning of Bankruptcy Rule 9014 and must be resolved after notice and opportunity for hearing upon a motion for relief. See Adv. Comm. Notes to Fed. R. Bankr.P. 9014. "[C]reditors have an obligation to respond to formal or informal requests for information. That request could even come in the form of a claims objection." In re Heath, 331 B.R. at 436. Under In re Campbell, 336 B.R. 430 (B.A.P. 9th Cir. 2005), any objection that raises a legal or factual ground to disallow the claim will likely prevail over a proof of claim lacking prima facie validity.

Upon objection, the proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir.1991) (quoting 3 Collier on Bankruptcy § 502.02, at 502-22 (15th ed.1991)); see also Ashford v. Consolidated Pioneer Mort. (In re Consol. Pioneer Mort.), 178 B.R. 222, 226 (B.A.P. 9th Cir. 1995), aff'd, 91 F.3d 151 (9th Cir.1996). To defeat the claim, the objector must come forward with sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." In re Holm, 931 F.2d at 623.

The B.A.P. in In re Campbell held that, "[o]bjections without substance are inadequate to disallow claims, even if those claims lack the documentation required by Rule 3001(c)." "If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence." In re Consol. Pioneer, 178 B.R. at 226 (quoting In re

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Allegheny Int'l, Inc., 954 F.2d 167, 173-74 (3d Cir.1992)). The ultimate burden of persuasion remains at all times upon the claimant. See In re Holm, 931 F.2d at 623.

Here, Movants claim that Debtor delivered to Claimant all of the coins she purchased. Movants however did not provide any evidence to support these contentions in the Motion or in a Reply. As noted in In re Campbell, "objections without substance are inadequate to disallow claims" which seems to be the case for this reason for objection. Claimant provided evidence via an invoice with Debtor's letterhead that detailed the purchase for which she alleges Debtor never delivered. See Motion, Ex. 1. Claimant also provided a complaint she filed on February 11, 2019, with BBB of Los Angeles and Silicon Valley stipulating her attempts to contact Debtor regarding the undelivered coins to no avail. Id. Movants have not provided sufficient evidence to shift the burden to Claimant. See In re Holm, *supra*.

For the second grounds for disallowing the Claim, Movants point to the tardiness of the filing of the Claim. The bar date was three months past before the Claim was filed. Although the tardiness can be sufficient to disallow the claim, Movant's own exhibit shows that Claimant was not listed on Debtor's E/F Schedules. See Motion, Ex. 1. Because Movants do not dispute that Claimant did not receive timely notice of Debtor's bankruptcy petition and bar date, it appears this claim would be entitled to be paid under section 726(a)(2)(c).

Lastly, Movants argue that the statute of limitations for breach of contract, obligation, or liability, has run past its four years and, per section 337(d) of the CCP, once the period has ran, "a person shall not bring suit or initiate an arbitration or other legal proceeding to collect the debt." Claimant cites to In re Midland Funding, 137 S.Ct. 1407 (2017), arguing that, "a creditor had rights to the payment of a debt even after the limitations periods has expires, but no further rights to commence a lawsuit for the purpose of obtaining a judgment on that debt." See Opposition, ¶ 8. Midland is inapplicable here, as the issue before the U.S. Supreme Court in Midland Funding was whether filing a proof of claim, which was clearly barred by the applicable statute of limitations, was a violation of the Fair Debt Collection Practices Act ("FDCPA"). Holding that filing a claim that was time-barred under state law was not a violation of the FDCPA, the Supreme Court explained that a "claim" is a "right to payment" under 11 U.S.C. §101(5)(A) and the scope of that right is determined by state law. Id. at 1412.

The Court, finding that a time-barred claim is not *per se* unenforceable as a claim in a bankruptcy, explained:

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The word "enforceable" does not appear in the Code's definition of "claim." See 11 U. S. C. §101(5). [...] Section 502(b)(1) of the Code, for example, says that, if a "claim" is "unenforceable," it will be disallowed. It does not say that an "unenforceable" claim is not a "claim." Similarly, §101(5)(A) says that a "claim" is a "right to payment," "whether or not such right is . . . fixed, contingent, . . . [or] disputed." If a contingency does not arise, or if a claimant loses a dispute, then the claim is unenforceable. Yet this section makes clear that the unenforceable claim is nonetheless a "right to payment," hence a "claim," as the Code uses those terms.

[...] Other provisions make clear that the running of a limitations period constitutes an affirmative defense, a defense that the debtor is to assert after a creditor makes a "claim." §§502, 558. The law has long treated unenforceability of a claim (due to the expiration of the limitations period) as an affirmative defense. [Internal citations omitted]. And we see nothing misleading or deceptive in the filing of a proof of claim that, in effect, follows the Code's similar system.

Id.

Under Cal. Code Civ. Pro. § 337, there is a four-year statute of limitation period for breach of contract claims. Claimant asserts a right of payment that arose in 2013 and she did not file suit against Debtor within that four-year period that expired prior to the Debtor's bankruptcy filing on March 3, 2019. While Claimant is entitled to file a claim here, she did not explain in her opposition why the statute of limitations should not apply to disallow this Claim under § 502(b)(1) as unenforceable against Debtor or property of Debtor.

Service is proper on Claimant, per address listed on proof of claim. Response filed.

Motion is GRANTED under 502(b)(1).
APPEARANCE REQUIRED.

Party Information

Debtor(s):

Capital Gold Group Inc.

Represented By
Sevan Gorginian

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Trustee(s):

Diane C Weil (TR)

Represented By
Kathy Bazoian Phelps

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1:18-10828 Nazaret Kechejian

Chapter 13

Adv#: 1:18-01101 Kechejian v. Mkrchyan et al

#16.00 Status Conference Re:

Complaint for:

- (1) Violation of California High Cost Mortgage Law;
- (2) Violation of TILA;
- (3) Violation of HOEPA;
- (4) Violation of California Civil Code Sec. 1632;
- (5) Unconscionability (Civil code Sec. 1688 e. seq);
- (6) Intentional Misrepresentation;
- (7) Fraud;
- (8) Unfair Business Practices (BPC Sec. 17200)
- (9) Declaratory Relief

fr. 11/7/18; 7/31/19; 9/25/19; 12/11/19, 9/30/20,
1/27/21; 6/10/21, 6/21/21, 6/24/21, 6/25/21, 7/30/21; 8/9/21
11/4/21, 12/21/21; 1/12/22; 2/23/22, 5/4/22

Docket 1

***** VACATED *** REASON: Dismissed 5/31/22 - hm**

Matter Notes:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nazaret Kechejian

Represented By
Stella A Havkin

Defendant(s):

Greg Mkrchyan

Pro Se

Kirill Kizyuk

Pro Se

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Chapter 13

Prime Capital Group, Inc., a Pro Se

Mkrtchyan Investments, LP, a Pro Se

Arthur Aristakesyan Pro Se

Phantom Properties, LLC, a Nevada Pro Se

Dimitri Lioudkovski Pro Se

LDI Ventures, LLC, a California Pro Se

Plaintiff(s):

Nazaret Kechejian

Represented By
Stella A Havkin

Trustee(s):

Elizabeth (SV) F Rojas (TR) Pro Se

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1:21-10251 Thomas John Shayman

Chapter 7

Adv#: 1:21-01025 Aquino v. Shayman

#17.00 Motion to Compel Deposition of Defendant and Request for Sanctions

Docket 37

Matter Notes:

- NONE LISTED -

Tentative Ruling:

On February 15, 2021, Thomas Shayman filed a voluntarily chapter 7 petition, and received a discharge. On May 24, 2021, Leila Aquino filed a complaint seeking a determination that a judgment entered in her favor in Los Angeles Superior Court non-dischargeable pursuant to 11 U.S.C. §§ 523(a)(2), (4), and (6). The Judgment is attached as Exhibit A to her complaint. The State court jury found that Shayman made a promise to Aquino and that at the time he did not intend to perform the promise when he made it. (Judgment 7:14-7:17; 7:12-7:23). Further, the Judgment states that the Aquino justifiably relied on this false promise and that Plaintiff was damaged as a result. (Judgment 8:7-8:8; 8:12-8:14).

Shayman timely answered. Dkt 17. His counsel later withdrew, so Defendant is in pro per. There is a status conference set for June 29, 2022.

Motion to Compel Deposition

Part VII of the Federal Rules of Bankruptcy Procedure governs adversary proceedings and incorporate the discovery procedures set forth in the Federal Rules of Civil Procedure ("FRCP") to govern adversary proceedings. A party may depose any person, without leave of court, and may compel the attendance of that person with a subpoena by following the requirements of FRCP 45 and 30.

Plaintiff wrote to Defendant by regular and certified mail three times in October and November 2021 and March 2022 re "attempts to confer" on a discovery plan. Defendant did not respond. At the status conference hearing of March 22, 2022, Defendant was asked to and did provide his phone and email address, and he agreed to accept service by email.

After the March 22 status conference, Aquino's counsel emailed Defendant on March 23 and April 12, 2022. Defendant did not respond. On April 18, 2022,

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Plaintiff's counsel then served a notice of deposition, setting his deposition on April 29, 2022. Dkt 37, Exhibit 3. Defendant was provided 11 days' notice, more than adequate notice under the FRCP. He did not respond. On April 26, 2022, Plaintiff's counsel sent Defendant an email to confirm that Defendant would be attending. The next day, April 28, 2022, Defendant responded, simply, "Counselor, I will not be attending." He wrote that he would not be available for 35 days. Again no explanation was provided.

Copies of these email communications are attached to the Declaration of Moses Bardavid. Dkt 37. As of 5/20/22, Defendant has not filed a response to Plaintiff's Motion. He has simply ignored it. Defendant has not sought a protective order excusing him from attending his deposition.¹

The service of the notice was sufficient to compel Shayman to appear for deposition. See Jules Jordan Video, Inc. v. 144942 Can. Inc., 617 F.3d 1146, 1158 (9th Cir. 2010) (observing that under FRCP 30, "a simple notice of deposition is sufficient to compel [a party's] attendance"). See also Sali v. Corona Reg'l Med. Ctr., 884 F.3d 1218, 1222 (9th Cir. 2018).

An order to compel Defendant to attend his deposition is proper. The Motion is granted.

Request for Sanctions

a. Generally

Rule 37 authorizes the court to sanction parties for failing to attend their own depositions. See FRCP(d)(1)(A)(i). No subpoena is needed. The only requirement is that the party be "served with proper notice" of the deposition beforehand. *Id.*; see 7 James Wm. Moore et al., Moore's Federal Practice § 30.21 (3d ed. 2017).

b. Certification Requirement.

A motion to compel pursuant to FRCP 37(a) "must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action." FRCP 37(a)(1)(B).

FRCP 37(d) Party's Failure to Attend Its Own Deposition, Serve

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Answers to Interrogatories, or Respond to a Request for Inspection.

(1) In General.

(A) Motion; Grounds for Sanctions. The court where the action is pending may, on motion, order sanctions if:

(i) a party or a party's officer, director, or managing agent—or a person designated under Rule 30(b)(6) or 31(a)(4)—fails, after being served with proper notice, to appear for that person's deposition; or

(ii) a party, after being properly served with interrogatories under Rule 33 or a request for inspection under Rule 34, fails to serve its answers, objections, or written response.

(B) Certification. A motion for sanctions for failing to answer or respond must include a certification that the movant has in good faith conferred or attempted to confer with the party failing to act in an effort to obtain the answer or response without court action.

The certification requirement was met. See Bardavid Declaration. Dkt 37.

c. Purpose for sanctions.

"Sanctions allowed under [Fed.R.Civ.P.] 37 are intended to: 1) compensate the court and other parties for the added expenses caused by discovery abuses, 2) compel discovery, 3) deter others from engaging in similar conduct, and 4) penalize the offending party or attorney." Wouters v. Martin County, 9 F.3d 924, 933 (11th Cir.1993) (citation omitted). Discretion to impose sanctions is "not unbridled." Id.

In the present case, the plaintiff seeks sanctions for the added expense in legal fees caused by Mr. Shayman's discovery abuse. There is no explanation on the record for Defendant's non-appearance. Plaintiff's counsel sent multiple notices and patiently waited for responses. The complaint has been pending for since May 24, 2021, for over one year. Prosecution of the Plaintiff's claims are stalling out as a result of the delay.

d. Amount of Sanctions Sought

Plaintiff seeks sanctions of \$ 2250, which is five hours at \$450/hr. (4 hours of motion work and one hour to attend hearing on the motion). Dkt 37, at p 8 et seq.

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The Court GRANTS Plaintiff's motion to compel Defendant's deposition and GRANTS Plaintiff's motion for sanctions.

Party Information

Debtor(s):

Thomas John Shayman	Pro Se
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Defendant(s):

Thomas John Shayman	Pro Se
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Plaintiff(s):

Leila Aquino	Represented By Moses S Bardavid
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Trustee(s):

David Keith Gottlieb (TR)	Pro Se
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1:21-11781 Andrea Lynn Murray

Chapter 7

Adv#: 1:22-01011 Flannery v. Murray

#18.00 Status Conference Re: Complaint to
Determine Dischargeability of Debt

fr. 4/20/22

Docket 1

***** VACATED *** REASON: Cont'd to 8/17/22 at 11 a.m. - hm**

Matter Notes:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Andrea Lynn Murray

Represented By
Nicholas W Gebelt

Defendant(s):

Andrea Lynn Murray

Pro Se

Plaintiff(s):

Patrick Flannery

Represented By
Raymond H. Aver

Trustee(s):

Nancy J Zamora (TR)

Pro Se